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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Interconnection between Local	)	CC Docket No. 95-185
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

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REPLY COMMENTS OF GTE

GTE Service Corporation on behalf of its affiliated telephone and wireless companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463- 5214

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Their Attorney

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SUMMARY

GTE has argued that the Bill and Keep LEC-CMRS interconnection arrangement proposed in the Notice is fundamentally inconsistent with the Telecommunications Act of 1996 ("the 1996 Act") which governs LEC interconnection. The new statute does not anticipate a different interconnection treatment for CMRS or exclude LEC-CMRS interconnection arrangements from the scope of the interconnection requirements. The legal regime created by Sections 251 and 252 of the 1996 Act requires that the terms of LEC interconnection arrangements are to be negotiated and determined by agreement (with arbitration, where necessary, by the state commission), not mandated by this Commission.

Arguments by others that Sections 332 or 201 authorize Bill and Keep arrangements notwithstanding the clear mandate of Sections 251 and 252 are without merit. The Commission has already determined that Section 332(c)(3) does not authorize the Commission to preempt state regulation of the interconnection rates charged by LECs to CMRS providers and Section 201 does not confer FCC jurisdiction over the intrastate rates to be charged for interconnection.

Thus, since the 1996 Act gives carriers broad freedom to customize their own reciprocal compensation arrangements, the Commission does not have the authority to mandate Bill and Keep for LEC-CRMS interconnection. In its first significant opportunity to implement the deregulatory mandate of the 1996 Act,

the Commission should not be led astray by those who urge it to mandate Bill and Keep for LEC-CRMS interconnection.

Even if the Commission has the authority to mandate Bill and Keep for LEC-CMRS interconnection, a separate LEC-CMRS arrangement would be contrary to the public interest. If the Commission mandates a different LEC interconnection arrangement for CMRS providers than is to be provided to other telecommunications carriers, there would be a significant incentive to terminate interexchange traffic as CMRS local exchange traffic in order to avoid higher charges such as access charges. GTE argues that arbitrage is likely and cannot be detected. Moreover, any Commission action creating a new subsidy for CMRS providers at the expense of wireline customers would collide with the new mandates for universal service. Because the consequences of this type of arbitrage are so enormous and the affect on the Commission's interconnection and universal service policies so significant, as a matter of sound public policy, the Commission must consider the implications on its overall interconnection policy before mandating Bill and Keep even for an interim period.

The record is filled with examples of how the current LEC-CMRS interconnection arrangements have worked successfully. New CMRS entrants need no protection. CMRS providers, including existing cellular carriers and new PCS entrants are, for the most part, large, experienced telecommunications providers. As a matter of policy, there is no sound reason to impose a Bill and Keep arrangement at this time.

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GTE Service Corporation, on behalf of its affiliated telephone and wireless companies (collectively "GTE") respectfully submit this Reply to the Comments submitted in response to the Notice of Proposed Rulemaking ("Notice" or "NPRM") in the above-captioned matter. The Notice proposes policies and rules for interconnection between Local Exchange Carriers ("LECs") and Commercial Mobile Radio Service ("CMRS") providers and endorses a Bill and Keep compensation arrangement. GTE continues to assert that the Commission should terminate this narrowly focused proceeding or should consider LEC-CMRS interconnection within the context of, and subject to the substantive restrictions on, a proceeding implemented pursuant to new Section 251(d)(1).

DISCUSSION

A. The Telecommunications Act of 1996 Bars the Commission from Mandating Bill and Keep for LEC-CMRS Interconnection.

The Commission specifically directed parties to submit "comments on the implications of the Telecommunications Act of 1996 on the Commission's proposals and topics for comment regarding interconnection between local exchange carriers and commercial mobile radio service providers." Most striking about the comments of those who support mandatory Bill and Keep for LEC-CMRS interconnection is how much they ignore, or strive to sweep aside, the 1996 Act and how little they address its basic provisions and core structure. GTE asserts that this is a calculated strategy rather than mere oversight. A comprehensive understanding of the Telecommunications Act of 1996 ("the 1996 Act"), however, makes clear that the Commission does not have the authority to mandate Bill and Keep for LEC-CRMS interconnection.

1. Sections 251 and 252 apply to LEC-CMRS interconnection agreements.

GTE's Comments (at 6-12) addressed in detail the operation of new Sections 251 and 252. Without repeating that discussion in full here, GTE emphasizes two essential points that opposing parties have not confronted: (1) the 1996 Act created a new regime for all interconnection agreements between LECs and carriers providing local exchange or exchange access service, and (2) this regime applies with full force CMRS providers.

The hallmark of the new legal regime created by Sections 251 and 252 is that the terms of interconnection arrangements between carriers are to be negotiated and determined by agreement (with arbitration, where necessary, by the state commission), not mandated by this Commission. In particular, Sections 251(b)(5) and 251(c)(1) together provide that carriers shall negotiate between themselves "reciprocal compensation arrangements for the transport and termination of telecommunications." Moreover, Section 252(a)(1) provides that carriers are free to enter into interconnection agreements "without regard to the standards set forth in" Sections 251(b) and (c).[1] In sum, the 1996 Act gives carriers broad freedom to customize their own reciprocal compensation arrangements. Mandated Bill and Keep would be completely contrary to the deregulatory regime set forth in the 1996 Act.

The general interconnection regime set forth in Sections 251 and 252 applies with full force to LEC-CMRS interconnection. CMRS providers are "requesting telecommunications carriers" who seek "interconnection . . . for the transmission and routing of local exchange service and exchange access" under Section 252(c)(2). Even if it were the case (which it is not, as discussed below) that Section 332(c) previously gave this Commission authority to mandate Bill and Keep for LEC-CMRS interconnection regime, any such hypothetical authority would not survive the 1996 Act. The 1996 Act creates a new general framework for all LEC interconnection with carriers providing local exchange or exchange access service. Where Congress intended for the 1996 Act not to

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1 Likewise, Section 252(e)(2) sets forth two different standards of state commission review of interconnection agreements, depending on whether the agreement has been adopted by negotiation or by arbitration. Under Section 252(e)(2)(B), if the agreement has been adopted by arbitration, the state commission may reject the agreement if it finds that the agreement does not meet the requirements of Sections 251. But if the agreement has been adopted by negotiation, it need not (per Section 252(a)(1)) comply with the standards of Sections 251; therefore, under Section 252(e)(2)(A), the state commission may reject such an agreement only if it is discriminatory or contrary to the public interest.

override Section 332(c), it said so clearly and expressly. *See* GTE Comments at 12. By contrast, nothing in Sections 251 or 252 carves out LEC-CMRS interconnection from their scope.

2. Section 332 does not authorize Bill and Keep.

Beyond largely ignoring the 1996 Act, parties supporting mandatory Bill and Keep make essentially two arguments. First, they claim that Section 332 gave the Commission authority to mandate Bill and Keep. This argument, however, is contrary to past FCC findings and is irrelevant.

Contrary to Cox's argument, the FCC has already determined that Section 332(c)(3) of the Communications Act does not authorize the Commission to preempt state regulation of the interconnection rates charged by LECs to CMRS providers. Thus, in rejecting the Louisiana Public Service Commission's petition to regulate CMRS rates, the FCC stated that "the interconnection rates charged by landline telephone companies to CMRS providers appears to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3)."[2] Accordingly, Cox's assertion that Section 332(c)(3) gives the Commission authority to mandate Bill and Keep is patently wrong.

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2 Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, Report and Order, 10 FCC Rcd 7898, 7908 (1995).

The argument made by Cox and others is, in any event, irrelevant, because, as shown above, even if (contrary to fact) Section 332(c) did authorize this Commission to mandate Bill and Keep, the new regime under the 1996 Act now governs.

3. Section 201 does not authorize Bill and Keep.

A second argument suggested by supporters of mandatory Bill and Keep is that new Section 251(i) -- which provides that nothing in Section 251 "shall be construed to limit or otherwise affect the Commission's authority under section 201" -- somehow gives this Commission the authority to mandate Bill and Keep. This argument appears to have two versions. Having misread the 1993 Budget Act with respect to the Commission's authority to regulate LEC rates for CMRS interconnection, Cox proceeds to argue that the Commission therefore has full authority over CMRS under section 201. But Cox's conclusion falls with its faulty premise.

A second version of the Section 251(i) argument is that, completely apart from the 1993 Budget Act, the FCC has authority under Section 201, standing alone, to mandate Bill and Keep for LEC-CMRS interconnection. This argument is both wrong and problematic. It is wrong because Section 201 gives this Commission authority over interstate communications, whereas CMRS has both interstate and intrastate components. Even though Section 201 mandates interconnection, where reasonable and in the public interest, the Commission has recognized that such jurisdiction does not confer jurisdiction over the intrastate rates to be charged for interconnection.[3]

A conclusion that this Commission has jurisdiction under Section 201 to mandate Bill and Keep would also create problematic results, for it would splinter the uniform regime that Congress has created in the 1996 Act. Indeed, under the logic of the Section 201 argument, this Commission could create an entire regime for CMRS -- or for other providers -- that is wholly separate from that created under the 1996 Act. Nothing could be more plainly contrary to the intent of Congress in enacting the 1996 Act.

In its first significant opportunity to implement the deregulatory mandate of the 1996 Act, the Commission should not be led astray by those who urge it to mandate Bill and Keep for LEC-CRMS interconnection. Under the 1996 Act, reciprocal compensation arrangements are to be negotiated by the parties. The Commission has no authority to mandate Bill and Keep.

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3 *See The Need to Promote Competition and the Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910 (1987). "[W]e find that the physical plant used in interconnection of cellular carriers to landline carriers is within our plenary jurisdiction because the identical plant serves both interstate and intrastate cellular services. The charges for interconnection, however, are severable between the jurisdictions because the underlying costs of interconnection are segregable. Charges for switching interconnected calls are also subject to dual jurisdiction." *Id.* at ¶12. *Accord, Implementation of Section 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1498 (1994), *petitions for recon. pending*.

B. Even If the Commission Has the Authority to Mandate Bill and Keep for LEC-CMRS Interconnection, a Separate LEC-CMRS Arrangement would be Contrary to the Public Interest.

While the Notice and some Commenters tout the perceived advantages a Bill and Keep arrangement, significant adverse consequences which would affect the larger interconnection policy so critical to the new telecommunications environment are not adequately addressed. Specifically, if the Commission mandates a different LEC interconnection arrangement – such as Bill and Keep -- for CMRS providers than is to be provided to other telecommunications carriers, there would be a significant incentive to terminate interexchange traffic as CMRS local exchange traffic in order to avoid higher charges such as access charges.[4]

As discussed below, under a Bill and Keep arrangement, arbitrage is likely and the LECs cannot detect arbitraged traffic. Because the consequences of this type of arbitrage are so enormous and the affect on the Commission's entire interconnection policy so significant, as a matter of sound public policy, the Commission must consider the implications on its overall interconnection policy before mandating Bill and Keep even for an interim period.

GTE agrees with U S West (at iv): "Arbitrage [under Bill and Keep] is not just a possibility, it is a reality: all carriers must constantly strive to reduce their

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4 Today, nationwide interexchange access charges are over $30 billion, more than 30 times the total nationwide estimate for LEC-CMRS interconnection charges. Any arbitrage of this critical revenue source will cause severe financial harm to LECs.

costs to improve their competitive stature." If there is a less expensive way to terminate traffic, it is certain that carriers will find it and use it. This has already been the case within the access charge structure. For example, if a service is offered in the interstate and intrastate tariffs, carriers may choose to order service depending upon which jurisdiction offers more favorable terms. Similarly, carriers with sufficient traffic volume divert traffic from switched access to special access because of the price advantage.

1. Arbitrage is likely under a LEC-CMRS Bill and Keep arrangement.

As PacTel (at 11) states, "Bill and Keep would encourage arbitrage by subsidizing one technology, at the expense of others. For instance, when an IXC has a wireless affiliate or an agreement with a wireless entity, all the IXC's normal wireline terminating traffic could be routed via the wireless network for call completion to the LEC network and avoid normal access charges."

While this is of particular concern because the largest interexchange carrier (AT&T) is affiliated with the largest CMRS provider (AT&T Wireless), it would also readily occur even when there is no affiliation between the interexchange carrier and the CMRS provider. In a Statement (at 18) accompanying Ameritech's Comments, Kenneth Gordon describes how Bill and Keep can be manipulated:

> [O]ne can imagine an interexchange carrier deciding to terminate its traffic through a CMRS, which could in turn deliver the call via its interconnection arrangement with the LEC. Suppose the LEC access charge is 3.5 cents. With an interconnection charge via the CMRS provider of 0 cents, the CMRS could charge the IXC 1.5 cents benefiting both. ... Note that such

> an arrangement can be profitable to both the IXC and the CMRS, and that it would operate by avoiding the interstate access charge. ... Bill and keep, i.e., zero pricing, will point alert firms toward just such arbitrage opportunities.

CMRS carriers are already establishing the necessary network configurations to provide terminating arrangements for interexchange carriers. The Declaration of Sandy Kiernan (at ¶3) accompanying Vanguard Cellular's Comments discusses Vanguard's recent network changes:

> [w]e chose to be on a software defined network. This allows us to take advantage of several services via the same trunk lines we have in place today. Our previous platform would have required us to install a different trunk for each service.

Kiernan (at ¶5) further confirms Vanguard's arrangements with IXCs to bypass the LEC network:

> Today we use dedicated trunks to send outgoing long distance traffic directly to the IXC. This allows us to bypass the local exchange carrier and receive a better rate from the IXC. We are currently working on a plan to use our dedicated trunks for incoming long distance traffic and again bypass the LEC. The IXC will give us a 40% discount on the local loop portion of these trunks. They are able to do this because they do not have to pay the LEC to carry the traffic.

Clearly CMRS providers such as Vanguard would have the ability and the incentive to redirect traffic received from interexchange carriers over LEC-CMRS interconnection arrangements. With a Bill and Keep interconnection arrangement, the CMRS provider would benefit significantly from this increased traffic. This ability to redirect traffic would have tremendous implications on the entire interconnection issue.

GTE and other LECs explained in their Comments that they do not have the ability to detect arbitraged traffic. It is questionable that even if LECs were to make substantial changes to their networks, at a very high price, whether traffic accurately could be distinguished. According to US West (at iv), "unless separate trunk groups are used for different types of traffic, no carrier has the ability to determine whether its network is being used for one type of traffic as opposed to another."

2. Arbitraged traffic cannot be detected.

Under current conditions, LECs would not be able to verify that traffic being terminated from a CMRS provider under a LEC-CMRS arrangement is actually local exchange traffic. Most trunk groups connecting LEC networks and CMRS provider networks do not have SS7 capability. Type 1 and Type 2A interconnections (without SS7) typically use an inbound multifrequency (MF) trunk signaling protocol. Without SS7, the LEC has no way of knowing where in the network the call originated.[5] The LEC terminates the call to the called number without further analysis or action. Without being able to determine the

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5 "Compatibility Information for Interconnection of a Wireless Services Provider and a Local Exchange Carrier Network" Bellcore Technical Reference TR-NPL-000145, Issue 2, December 1993 at 2-18: "Coupled with a Type S interface, the Type 2A with SS7 interface will allow for additional capabilities beyond those able to be supported with Type 2A (without SS7) interface with trunks setup and released using inband signaling. For example, the calling party number may be included in the call setup signaling on the Type S interface when the Type 2A with SS7 interfaces is used for establishing trunk connections."

point of origination in the network, the LEC has no way of confirming that the interconnecting carrier is abiding by the terms of the interconnection agreement.

The MF signaling protocol used for a CMRS provider to LEC has no provision for the transmission of the calling number in the Type 1 or Type 2A interconnection arrangement between a LEC and a CMRS provider.[6] Only the Type S interconnection arrangement provides the means for the LEC office to identify the origination of the call.[7] Therefore, the LEC can only assume that all traffic sent over the CMRS connection is mobile originated traffic.

3. Safeguards are needed to avoid distortion of the interconnection policy.

The current interconnection arrangements offer little financial incentive to redirect or mis-classify traffic since the CMRS provider pays an interconnection rate not markedly different than that paid by the IXCs under access charges.[8] Under Bill and Keep, however, that rate paid by CMRS providers effectively falls to zero. Then, there would be a tremendous financial incentive for the CMRS provider to redirect and mis-classify terminating traffic. Under a Bill and Keep

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6 The MF signaling protocol used for a CMRS provider to LEC (M/L) call is KP+7/10D+ST. (The start code (KP), the 7 or 10 digit called number, then stop code (ST).) Bellcore Technical Reference 145 at 3-7.

7 Even with SS7 equipped facilities, today the GTE telephone companies do not use the calling number to distinguish carrier type (IXC, CMRS, LEC). Implementing this function would require additional software as well as rerouting instructions for handling improperly routed calls.

8 Interconnection charges, while seldom the same as access charges, are of the same order of magnitude. Under a Bill and Keep arrangement that reduces the rate to zero is clearly less.

arrangement, calls originating from an IXC which are terminated into the LEC office through the CMRS provider under a LEC-CMRS interconnection, may cost little or nothing for interconnection rather than the tariffed access rate. Since the LEC has no means to know whether actual traffic terminated by the CMRS provider is within the terms of the arrangement, any carrier that operates as a CMRS provider, ALEC, and/or Interexchange Carrier has a great incentive to take advantage of the different rates and rate structures under Bill and Keep.

Before the Commission adopts any different arrangement for CMRS interconnection, including Bill and Keep, it must first establish safeguards to assure that traffic will not be diverted from access to CMRS traffic to avoid the higher charges. Without appropriate safeguards, the adverse affect on other Commission policies are obvious. Because of the implicit subsidies currently included in the access charge structure, the affect of lost access revenue would result in increased costs for universal service and higher rates for wireline subscribers. The economic consequences to the LEC and its wireline customers could be staggering and the damage to the Commission's ability to set access charge policy profound.

Even if the Commission finds that it has the authority to order different interconnection arrangements for LEC-CMRS interconnection, which GTE believes it does not, GTE urges the Commission to avoid the significant distortions which would occur from such different treatment and consider LEC-CMRS interconnection along with the general interconnection issues.

4. Universal telephone service considerations strongly argue against adopting Bill and Keep for LEC-CMRS interconnection arrangements.

Any attempt to resolve universal service issues within the limited scope of the instant proceeding risks adopting policies that will not be in harmony with larger telecommunications issues.[9] As discussed *supra*, Bill and Keep swings the door wide open to arbitrage. Arbitrage will result in LECs losing substantial access revenues that under the current pricing structures, are used to support high-cost local exchange service. In addition, as PacTel (at 62 -63) correctly observes:

> Bill and keep would encourage new entrants to build networks that serve only those customers who are less costly to serve or are more willing and able to pay higher prices. The incumbent LECs alone would have networks that serve the higher-cost and lower willingness-or-ability-to-pay customers. The new entrants would simply use the incumbent LEC's networks for terminating traffic to those customers. Without the right to collect revenue form the new entrants for terminating their traffic, new sources of funding would be needed to support services to these areas and customers.

Before adopting any LEC-CMRS interconnection arrangements (interim or long term), the Commission must know how its actions will affect its other long standing policies such as universal telephone service. The record of this proceeding does not contain the factual information necessary to make such a determination.

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[9] GTE Comments at 35

Moreover, the 1996 Act requires that universal service support flows be "explicit and sufficient" and be recovered on a "equitable and nondiscriminatory" basis from all telecommunications carriers.[10] The Commission has explicitly recognized these requirements and is presently examining a number of the existing subsidy flows hidden within its access charge regime with the express purpose of compliance with the specific mandates of the 1996 Act.[11] Any Commission action creating a new subsidy for CMRS providers at the expense of wireline customers would collide with the mandates of the 1996 Act, and could be inconsistent with the Commission's ongoing universal service proceeding.

If the Commission adopts Bill and Keep before it has addressed the future funding of universal service, it will undercut a revenue source which is relied upon by the LECs to provide reasonably priced local service, without making alternative funds available. This is neither sound public policy nor a competitively neutral approach to the provision of universal service. These considerations, in addition to all the above, argue against the adoption of Bill and Keep as an interim LEC-CMRS interconnection arrangement.

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10 Sections 254(e) and 254(b)(4).

11 *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, released March 8, 1996, at ¶¶112-115, proposing (i) to replace the Carrier Common Line charge with a higher Subscriber Line Charge and/or explicit support from a universal service fund, and (ii) to eliminate Long Term Support payments by the largest exchange carriers.

C. Brock's Assumptions, Analysis and Conclusions are Flawed.

The Notice, based largely on an analysis by Gerald Brock,[12] assumes that Bill and Keep is economically efficient if either (1) traffic is balanced in each direction or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate. Not only are Brock's assumptions incorrect, but his analysis is flawed and his conclusions are wrong.

Neither of Brock's underlying assumptions is correct. While no one suggests that the current LEC-CMRS traffic flows are balanced,[13] proponents of Bill and Keep, relying on the Brock analysis, argue that at 0.2 cents per minute, the cost-based rate for interconnection is "close enough" to zero. As stated in the Rebuttal Testimony of Jerry Hausman at 7-8 accompanying the SBC Comments:

> Cost based prices and the price signals they represent are necessary to enable buyers and sellers, or in this case interconnecting carriers, to make economically efficient interconnection decisions . . . [Bill and Keep is] a system of interconnection whereby there are no price signals as to the costs that interconnection imposes on terminating carriers' networks. Without proper price signals, competitive carriers will not make economically efficient interconnection investment decisions.

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[12] NPRM at n.78

[13] *See* GTE Comments at 20; SBC Comments at 12; PacTel Comments at 13.

Brock excludes all common costs from his estimates.[14] Local exchange telephone companies must invest in disproportionately large amounts of nontraffic sensitive plant in order to provide service. As stated by PacTel (at 56), "Dr. Brock does not consider any shared and common costs in his analysis. Bill and Keep would prevent LECs not only from recovering LRIC but also the shared and common costs that a firm must recover in order to stay in business." (footnote omitted).

By excluding these very real costs from interconnection rates, the LEC is forced to recover these costs from the its wireline customers.[15] Thus Brock's assumptions, if implemented would establish an implicit subsidy from wireline customers to CMRS customers. As stated by PacTel (at 60):

> Bill and Keep will create a new subsidy system, as the Commission works to reduce subsidies in other areas. It is bad economic policy to create a new subsidy system without any public interest rationale such as supporting universal service, education, or healthcare.

GTE agrees that this is neither fair nor competitively neutral, as required in the newly evolving telecommunications environment. As BellSouth states at 27:

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14 *See* U S West Comments at 34: "Mr. Brock never explains in his paper why a LEC should be unable to recover these costs from CMRS providers. CMRS providers benefit directly by such costs; if a LEC does not incur common and overhead costs, for example, it will be unable to provide any service to anyone, including CMRS providers."

15 "Mr. Brock never explains why CMRS providers, among all network users, should, as a result, be subsidized by other users." U S West at 34.

> ['B]ill and keep' would cause LECs to attempt to recover costs from other than the cost-causative customer -- in other words, LECs would be forced to cross-subsidize the cost of terminating mobile-to-land traffic from other sources.

The Commission should be attempting to remove implicit subsidies during this time of increasing competitive choices for telecommunications. A subsidy for CMRS cannot be shown to be necessary or in the public interest.[16]

Nonetheless, LDDS proposes that the Commission establish such a subsidy. "[T]hese economic overhead costs should be recovered by the LECs in their retail rates (e.g., in basic telephone service and in so-called "vertical calling features," such as Caller-ID and call waiting), and not in their carrier interconnection rates." This loading of disproportionate costs on the LECs basic telephone service is contrary to the Commission's long standing policy of advancing universal basic telephone service and must be rejected in the public interest.

Brock's analysis contains other flaws. For example, Brock's use of a peak and off/peak average is inconsistent with how telecommunications networks are engineered and built. When the LEC furnishes

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[16] Even if the subsidy could be justified, it should be established as an explicit subsidy, based on other revenue sources than the wireline customers.

interconnection, it must do so at a defined level of service.[17] If the LEC cannot meet an interconnecting carrier's specified traffic requirements without degrading its current grade of service, the LEC would have to increase its investment in facilities to maintain the necessary grade of service. Most of the facilities affected are purchased in blocks of capacity ("lumpy investment") and thus are required to be in place for both peak and off peak periods. A simple algebraic formula of busy hour cost times busy hours divided by twenty four, as used by Brock, does not represent the "average" cost of LEC interconnection.

Because of the flaws in Brock's assumptions, analysis and conclusions, GTE urges the Commission not to rely on them in establishing the LEC-CMRS interconnection policy.

D. There is No Need to Adopt an Interim LEC-CMRS Interconnection Arrangement that Encourages the Development of CMRS Services.

Before adopting any new policy or changing an existing policy, the Commission must examine the evidence as put forth on the record and base its actions on the factual findings in the record. The record in the instant proceeding does not support the adoption of any interim interconnection

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[17] This level of service is described in terms of the maximum number of calls per one hundred that do not complete. A PO .01 grade of service represents a 99% completion capability during the busy hour in the busy season.

arrangement, much less an arrangement that cannot accomplish its stated purpose, and will disrupt so many critical Commission policies as would bill and keep.

Existing LEC-CMRS interconnection arrangements have allowed CMRS providers to prosper. The record is filled with examples of how the current LEC-CMRS interconnection arrangements have worked successfully. NYNEX's Comments (at 11-12) illustrate that CMRS providers have not been impeded in developing wireless services:

> The year-over-year growth rate of these services continues to be astonishing, running far beyond even the most optimistic expectations. Any industry that can serve 16 million customers generating $10.9 billion in revenues (as wireless carriers did in 1993) and then increase subscribership by 51 percent and revenues by 31 percent the following year, is and should be the envy of every other business venture. (footnote omitted)

In earlier proceedings, CTIA supported the current negotiation arrangement finding that "[c]ellular companies and LECs have negotiated and implemented satisfactory interconnection agreements."[18] CTIA also recognized that mandatory interconnection requirements are costly and should be avoided.[19] Although CTIA now supports Bill and Keep, CTIA fails to present evidence or to explain why things have changed since 1994. Simply, there has been no

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[18] Comments of CTIA, CC Docket No. 94-54, filed September 12, 1994 at 20.

[19] Comments of CTIA, CC Docket No. 94-54, filed June 14, 1995 at 6.

change to justify the policy proposed.

If the current arrangements were preventing CMRS providers from developing wireless services, the record would be filled with complaints detailing such abuse. It is not. U S West (at 22) addresses the absence of complaints:

> If LEC interconnection arrangements were truly as unreasonable as some CMRS providers now contend, why, then, have so few complaints been filed with this Commission or state commissions? Complaints have not been filed because current LEC - CMRS interconnection arrangements are reasonable.

If current arrangements were not reasonable, CMRS providers certainly would have pursued relief under the formal complaint process. Any retroactive claims of injury must be dismissed by the Commission as nothing more than self-serving attempts to gain a financial advantage under Bill and Keep arrangements.

Clearly, the factual record in this proceeding does not support the need for immediate Commission action directed at encouraging the development of CMRS by mandating a favorable interim interconnection arrangement with LECs. The record tells of strong and healthy CMRS providers "holding their own" in good faith negotiations for interconnection under the current policies. In CTIA's own words "the Commission should be guided by the old adage, 'if it ain't broke, don't fix it.'"[20]

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[20] Reply Comments of CTIA, CC Docket No. 94-54, filed October 13, 1994 at 9.

Although the Notice suggests that new CMRS entrants need some protection, the facts do not supported this. CMRS providers, including existing cellular carriers and new PCS entrants are, for the most part, large, experienced telecommunications providers. These sophisticated companies have extensive experience bargaining interconnection agreements with the LECs.

In fact, CMRS providers are or will become some of the largest customers of the LECs. These companies have sufficient bargaining power to negotiate with the LECs, just as other large carriers do. Even smaller, truly new entrants will be able to take advantage of the bargaining power of the existing CMRS providers.[21] CMRS providers have many options for alternative distribution and have been taking advantage of these options.[22] Recognizing that CMRS providers' potential as large users and that they have other options, LECs have been and will continue to negotiate fair and equitable interconnection arrangements.

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21 As the national Telephone Cooperative Association states (at 17 n.35): "The promotion of new competitive entrants in what is a highly capital intensive telecommunications industry, while arguably a worthy goal, should not be financed out of the pockets of the owners of the traditional facilities' providers or out of the pockets of users of those traditional providers services. . . . Instead, if the promotion of new competitors has merit, it should be achieved, and the capital intensive activities assisted, through more general public resources than through the confiscation of property of the existing companies. This penalty to existing companies will lead to higher rates, or deteriorating service to users, or both." GTE agrees.

22 *See, e.g.*, SWB *Ex Parte*, filed March 15, 1996 at 7.